

This Opinion is Not a
Precedent of the TTAB

Mailed: April 14, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Ruta Maya Royalty, Ltd

Serial No. 90453034
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James O. Houchins of Law Office of James O. Houchins,
for Ruta Maya Royalty, Ltd.

Michael FitzSimons, Trademark Examining Attorney, Law Office 103,
Stacy Wahlberg, Managing Attorney.

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Before Wellington, Adlin, and Pologeorgis,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Ruta Maya Royalty, Ltd. (“Applicant”) seeks registration on the Principal Register of the standard character mark **JIGUANI** under Section 2(f) of the Trademark Act (“the Act”), 15 U.S.C. § 1052(f), for “coffee” in International Class 30.¹

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(e)(3) of the Trademark Act, 15 U.S.C. § 1052(e)(3), on the ground that

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¹ Application Serial No. 90453034, filed on January 7, 2021, based on an allegation of first use and first use in commerce on May 29, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

the mark is primarily geographically deceptively misdescriptive of the identified goods.²

When the refusal was made final, Applicant appealed. The appeal has been fully briefed, including a reply brief from Applicant.

I. Primarily Geographically Deceptively Misdescriptive – Applicable Law

Section 2(e)(3) of the Trademark Act prohibits registration of marks that are primarily geographically deceptively misdescriptive of the identified goods or services. A mark is primarily geographically deceptively misdescriptive if all of the following conditions (“elements”) are met:

1. the primary significance of the mark is a generally known geographic location;
2. the goods do not come from the place named in the mark, but the relevant public would be likely to believe that the goods originate there; and
3. the misrepresentation is a material factor in the purchaser’s decision to buy the goods in question.

In re Miracle Tuesday, LLC, 695 F.3d 1339, 104 USPQ2d 1330, 1332 (Fed. Cir. 2012);

In re Spirits Int’l, N.V., 563 F.3d 1347, 90 USPQ2d 1489, 1490-95 (Fed. Cir. 2009); *In*

² The Examining Attorney also refused registration on the ground that the mark is deceptive under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a). The Section 2(a) refusal was expressly withdrawn by the Examining Attorney in his appeal brief. 6 TTABVUE 11 n.1. Thus, this ground for refusal is not before us.

The TTABVUE and Trademark Status and Document Retrieval (TSDR) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .pdf version of the documents.

re California Innovations, 329 F.3d 1334, 66 USPQ2d 1853, 1857 (Fed. Cir. 2003);
TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1210.01(b) (July 2022).

II. Analysis of Arguments and Evidence

At the outset, we note that Applicant, in its reply brief, states:³

Applicant acknowledges that Jiguani is a small municipality in a coffee growing region of Cuba and so states on its packaging and website as strictly a matter of cultural information. Applicant acknowledges that its coffee originates from the State of Chiapas in Mexico, not from Cuba.

The Examining Attorney also submitted materials, discussed *infra*, regarding the Cuban town of Jiguani, and showing that this town's name does not have any non-geographic meaning or surname significance.⁴ Thus, for purposes of the aforementioned elements in establishing whether the proposed mark is primarily geographically deceptively misdescriptive, there is no dispute that Jiguani is a geographic location and Applicant's coffee does not come from that location.

Applicant, however, strongly disputes whether Jiguani is a "generally known" location, as required by the first element of the test. Specifically, Applicant argues that the "vast majority of Americans have no idea where or what Jiguani is [and consequently, it is almost impossible that purchasers would make a goods/place association."⁵ Applicant argues that without a goods/place association, its use of JIGUANI on coffee "could not be 'a material factor in a significant portion of the

³ 7 TTABVUE 5.

⁴ See, e.g., July 28, 2021 Office Action, TSDR pp. 2-5.

⁵ 4 TTABVUE 3.

relevant consumer's decision to buy the [coffee]."⁶ Applicant also asserts that its use of the mark JIGUANI "was never intended to represent the origin of the coffee, but rather, as indicated clearly in language on the packaging and on Ruta Maya's website, was intended to be a tribute to the tradition of coffee production among indigenous peoples from Cuba to the Yucatán."⁷

Applicant further argues that the relevant public would not believe Applicant's coffee comes from Jiguani nor would this be a material factor in their purchasing decision.

Applicant submitted the following photograph of its product packaging and text from its website:⁸

⁶ *Id.*

⁷ *Id.*

⁸ Submitted with Applicant's Request for Reconsideration, filed August 3, 2022, and specimen filed with application. The Examining Attorney also submitted a printout from Applicant's website containing the same information. *See* July 28, 2021 Office Action, TSDR p. 5.



; and

Café Jiguani™

\$8.30

Roast Size Preparation Quantity

ADD TO CART

Ruta Maya® Organic Café Jiguani™

Café Jiguani™ (Mouth of the River) refers to the indigenous people of Cuba, mainly Taino Indians. The city Jiguani in the Province of Granma, which also includes the lush mountains of the Sierra Maestra, Cuba's main coffee region. Ruta Maya's Café Jiguani celebrates historic connections between the indigenous people of the Caribbean and the Maya of the Yucatan.

All three varieties of our Jiguani blend share flavor profiles consistent with Ruta Maya's primary line, with nuttier undertones and hints of cacao.

Shade-grown 100% Arabica beans, certified USDA organic by the Texas Department of Agriculture. Cultivated by a cooperative of Maya Indian farmers in the Highlands of Chiapas, Mexico.

*5 lb bags available for pre-grounding only.

Please note: Most orders will be filled within 3 working days and at your doorstep 7 to 10 days after purchase. We use UPS Ground delivery for shipping.

Finally, Applicant refers to a prior, now-cancelled registration and states:⁹

The most troubling aspect of this final action from the standpoint of the [Applicant], and maybe especially from the Applicant's attorney, the undersigned, is that this Mark, Jaguani (sic), was registered with the Applicant in the coffee category and actively utilized in the coffee market as a registered brand of [Applicant] for more than six (6) years, without there ever having been an issue of geographical deception or deceptive misdescription. Somehow in the midst of Covid disarray, my office missed the USPTO's renewal notice. Our oversight was, at least in part, also a result of the USPTO's having sent the notice to Merrily Porter, the attorney of record who filed the original application for registration of the Mark, who for many years worked in [counsel for Applicant's] office, but who has not been employed by our office now for several years. Therefore, of course, a new application for registration was filed.

Aside from Applicant's packaging and website, the only evidence submitted by the Examining Attorney that refers to the town of Jiguani is from the THE COLUMBIA GAZETTEER OF THE WORLD:¹⁰



⁹ *Id.* at 2. A copy of the prior registration was not submitted nor was a registration number provided.

¹⁰ July 28, 2021 Office Action, TSDR p. 2.

The Gazetteer describes Jiguani as having a population of 21,130 and being a “Dairying center. Also produces sugarcane, fruit, coffee, cacao. Granite quarrying. In its picturesque surroundings are ruins of a colonial castle and the Pepu caves.”¹¹ Nevertheless, and without referring to any evidence other than the Gazetteer entry and Applicant’s own packaging, the Examining Attorney asserts that “Jiguaní is [a] known location in Cuba’s major coffee-growing region, and the context in which applicant uses the mark, involving extensive references to Cuba, strongly supports a finding that consumers are likely to believe that applicant’s goods comprise Cuban coffee originating in Jiguaní.”¹²

In making our determination as to the first prong of the test for the refusal — whether the primary significance of Applicant’s mark, JIGUANI, is the name of a geographic place that is generally known to the consuming public — we are guided by the Federal Circuit’s decision in *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987), involving a refusal of the mark VITTEL and design on the ground that it is primarily geographically descriptive.¹³ In *Vittel*, the Federal Circuit held that “it is necessary that the purchasers perceive the mark as a place name and this is where the question of obscurity or remoteness comes to the fore.” 3 USPQ2d at 1452. Based upon the record in that case, the court

¹¹ *Id.*

¹² 6 TTABVUE 7.

¹³ Although the ground for refusal in *Vittel* was that the mark was geographically descriptive, under Section 2(e)(2) of the Act, the test for establishing that ground shares the same first two prongs or elements (as set forth above) for refusals under Section 2(e)(3). Thus, caselaw involving either ground for refusal is pertinent to the question of whether the primary significance of a mark is a generally known geographic location.

found “Vittel” is the name of a small town in France, and posed the question, “how many people in this country know that?” and ultimately found the evidence “insufficient to show the likelihood of [the relevant consuming public] thinking that Vittel refers to a place where the goods come from.” *Id.*

Thus, we must ask ourselves the question: how many coffee consumers in the U.S. know that Jiguani is a town in Cuba?

On the record before us, the best answer to the question is that it has not been demonstrated that any meaningful number of American consumers of coffee have heard of Jiguani.

The Gazetteer entry reveals that Jiguani is a town in Cuba with a just over 21,000 inhabitants. It is described first as a “Dairying center,” and “coffee” is placed near the end of a list of several other goods produced in the town. Although the Board has recognized Gazetteer evidence as probative for purposes of showing that a term has geographic significance, *see, e.g., In re Loew’s Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865, 868 (Fed. Cir. 1985), the Federal Circuit has advised that “the mere entry in a gazetteer or the fact that a location is described on the internet does not necessarily evidence that a place is known generally to the relevant public.” *In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1448-49 (Fed. Cir. 2015) (citation omitted). *See also* TMEP § 1210.02(b) (“A gazetteer entry alone, or a description of the place on the internet, does not necessarily evidence that a place is generally known to the relevant American consuming public. Such evidence must, therefore, be

supported by evidence showing the extent to which relevant American consumers would be familiar with the location.”)

The Examining Attorney did not submit any other evidence to bolster the lone Gazetteer entry or assist us in gauging any level of possible exposure to or familiarity amongst American consumers with the town of Jiguani. Although the Examining Attorney submitted materials showing that Cuba has a coffee industry and a particular coffee-growing region, there is no mention of Jiguani in any of these submissions. The fact that Jiguani is located within a coffee-growing region in Cuba does not necessarily translate to the town being generally known to the relevant American public.

Applicant’s packaging and website may be one manner in which some consumers have become educated or aware of Jiguani. However, there is no basis for us to find that there has been a significant amount of American coffee consumer exposure to Applicant’s packaging or the website. Thus, without further context or evidence, we cannot determine the extent of such exposure, if any, and whether it has had a measurable effect on consumers’ knowledge and perception of Jiguani. We also cannot assume that Applicant’s website will always have this information. Finally, we note the additional language on the website explaining that Applicant’s JIGUANI coffee “celebrates historic connections between the indigenous people of the Caribbean and the Maya of the Yucatan” and that the coffee is “cultivated by a coop of Maya Indian farmers in the Highlands of Chiapas, Mexico.”

Upon review of the record, there is “not substantial evidence for the proposition that, to the relevant public, [Jiguani], is generally known.” *Newbridge*, 113 USPQ2d 1451. Rather, Jiguani appears to be only a remote and obscure town in Cuba whose existence is generally unknown to the American consumers of coffee. The “geographical significance [JIGUANI] is lost on the public because of its obscurity” and “it is, in effect, an arbitrary designation.” *ConAgra Inc. v. Saavedra*, 4 USPQ2d 1245, 1249 (TTAB 1987) (TAPATIO held not primarily geographically deceptively misdescriptive of meatless hot sauce, despite the fact that the mark is a Spanish term meaning “of or pertaining to Guadalajara, Mexico,” the Board finding insufficient evidence that a significant portion of the consuming public would perceive the mark as primarily a geographical designation). *See also In re Bavaria St. Pauli Brauerei AG*, 222 USPQ 926, 927-28 (TTAB 1984) (JEVER and design for beer produced in the German town of Jever is not primarily geographically descriptive because “Jever” has an obscure geographical meaning); *In re Brauerei Aying Franz Inselkammer KG*, 217 USPQ 73, 75 (TTAB 1983) (despite applicant’s beer coming from German town of Aying, the location is too remote or obscure; holding that when “the geographic significance of a name is lost on the public because of obscurity, there too, the usage becomes arbitrary.”). *See also* TMEP § 1210.04(c) (“Obscure or Remote Geographic Marks”).

Accordingly, we do not find on this record that the primary significance of JIGUANI is a generally known geographic location.

In view of our finding as to the threshold requirement of establishing the primary significance of JIGUANI, we need not and do not reach the other elements to determine whether the refusal was proper. *See In re Sibony*, 2021 USPQ2d 1036, *13 (TTAB 2021) (citing *In re Broken Arrow Beef and Provision, LLC*, 129 USPQ2d 1431, 1444 (TTAB 2019) (Board did not reach the other elements of the refusal to register under Trademark Act Section 2(e)(2) because first threshold element of geographic descriptiveness was not established, and refusal was reversed.)).

III. Conclusion

The burden rests on the Examining Attorney to prove each element of the test for establishing that Applicant's mark JIGUANI is primarily geographically deceptively misdescriptive of coffee. Based on the facts made of record, we find the evidence insufficient for purposes of the first element of the test; it has not been established that the primary significance of the mark is a generally known geographic location or place. Because this is a threshold requirement, we ultimately do not find that Applicant's mark is primarily geographically deceptively misdescriptive under Section 2(e)(3) of the Act.

Decision: The refusal to register Applicant's JIGUANI mark is reversed.